

**REMARKS**

As a preliminary matter, the indication of allowable subject matter in claims 24, 25, 29 to 32, 43, 45, 46, 48, 50, 51, 63, 74 and 77 is acknowledged with gratitude.

In a second preliminary matter, claim 52, which is substantially duplicative of original claim 26, is cancelled without prejudice herein. Concomitantly, claim 54 is amended to remove its dependency from now-cancelled claim 52. Likewise, claims 74 to 76 are cancelled without prejudice herein. Clearly, these claims as originally filed were substantially duplicative of claims 63 to 65. Accordingly, it is believed that these amendments are purely formal and unrelated to patentability. Therefore, they neither change the scope of the claims nor introduce any new matter into the specification.

Turning now to substantive issues, the Official Action dated October 5, 2007, has rejected claims 1, 5 to 14, 16, 20, 38 to 42, 44, 47, 49, 52 to 62, 64 to 73, 75, 76, 78 to 91 and 93 under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 6,358,604, issued to Peiffer et al. (hereinafter "Peiffer"). In addition, claims 1, 2, 3, 5 to 23, 26, 27, 28, 33 to 42, 44, 47, 49, 52 to 62, 64 to 73, 75, 76, 78 to 91 and 93 are rejected under 35 U.S.C. § 103 as obvious over Peiffer.

These are the sole substantive reasons set forth in the Official Action why the present application should not be allowed. The facts and reasoning set forth earlier in the prosecution are neither withdrawn nor abandoned. In addition, Applicant respectfully traverses these rejections for the further reasons set forth below.

Applicant respectfully submits that the cited reference does not describe the claimed invention with sufficient specificity to constitute an anticipation under the statute. See, e.g., the M.P.E.P. at § 2131.03. Specifically, the cited reference is deficient if it describes a range that overlaps or encompasses the claimed range; if the range described in the cited reference is broad and the claimed range is narrow; if the cited reference includes no examples that are within the claimed range; and if there is evidence of unexpected results within the claimed range. Furthermore, "[t]he unexpected results may also render the claims unobvious." *Id.*

In the present application, each of independent claims 1, 88 and 91 explicitly recites that “the glycol component consists essentially of 1,3-propanediol”. Component II, which is alleged in the Official Action to be anticipatory of claim 1 (Official Action at page 3), is described as a polycondensation product of a number of comonomers including “a copolymerizable aliphatic or cycloaliphatic glycol having from 2 to 11 carbon atoms.” Peiffer in column 4 at lines 9 to 10, e.g. Thus, the claimed range of glycols (“consisting essentially of 1,3-propanediol”) overlaps with and is narrower than the range of glycols described in the cited reference (“aliphatic or cycloaliphatic glycol having from 2 to 11 carbon atoms”).

In this connection, it is asserted in the Official Action that Peiffer states that “[a]n example of a suitable aliphatic [diol] is an aliphatic glycol of the general formula  $\text{HO}-(\text{CH}_2)_n\text{-OH}$ , where  $n$  is an integer from 3 to 6 (in particular 1,3-propanediol, ...)”. Official Action at page 3, apparently quoting column 3 of Peiffer at lines 15 to 18. Applicant respectfully submits, however, that this description has been taken out of context. It does not pertain to Component II, which is discussed in Peiffer beginning with the first line of column 4. Rather, it describes the base layer B of the film. See column 2 at line 64. Base layer B does not anticipate the claimed invention, at least in part because it does not include a sulfonate component. Column 2 at line 64 to column 3 at line 37. In addition, there is no teaching or suggestion in Peiffer to substitute the composition of base layer B for that of Component II, or vice versa. Therefore, the elements are not arranged as recited by the claim. M.P.E.P. at § 2131.

Returning now to the analysis of the cited reference for insufficiency of disclosure under M.P.E.P. § 2131.03, the examples of Peiffer include polycondensation products comprising no glycols other than ethylene glycol in any of Components I and II and the base layer B. See, e.g., column 9 at lines 25 and 62 to 63 and in column 10 at lines 14 to 19.

Moreover, the present specification includes evidence of surprisingly superior results within the claimed range that demonstrate that the present invention is neither anticipated by nor obvious over Peiffer. Specifically, the claimed copolyesters comprising 1,3-propanediol ("3G") exhibit improved thermal properties in comparison with copolyesters prepared from 1,2-ethanediol ("2G") and 1,4-butanediol ("4G"). These thermal properties are valuable attributes in copolyesters destined for use in many applications such as packaging, for example. See the specification on page 8 at lines 22 to 24, *inter alia*.

In particular, Applicant points to the following data, which are set forth in the specification on pages 63 to 71.

Example	Glycol	Thermal Properties	
		Melting Point (C°)	Level (J/g)
CE 1	2G	Not detected	Not detected
1	3G	138.5	16.0
CE 2	2G	185.1	16.8
CE 3	4G	174.3	25.2
4	3G	185.0	40.3
CE 4	2G	210.8	26.5
CE 5	4G	178.0	29.7
6	3G	207.8	42.4

Here, the comparison of Example CE1 with Example 1 demonstrates that a copolyester comprising 3G (1,3-propanediol) has a measurable melting point and degree of crystallinity, whereas the copolyester comprising 2G (1,2-ethanediol) is either amorphous, i.e., it has no melting point, or it has a crystallization rate that is not measurable by the techniques described in the specification.

The comparison of Examples CE2, CE3 and 4 demonstrates that the copolyester comprising 3G has approximately the same melting point as the copolyester comprising 2G, but with a level of crystallinity that is more than twice as high. Moreover, the copolyester comprising 3G has both a higher melting point and a higher level of crystallinity than the copolyester comprising 4G (1,4-butanediol).

Likewise, the comparison of Examples CE4, CE5 and 6 provides further evidence that the copolyester comprising 3G has approximately the same melting point as the copolyester comprising 2G, with a level of crystallinity that is more than twice as high, and that the copolyester comprising 3G has both a higher melting point and a higher level of crystallinity than the copolyester comprising 4G.

In light of the facts and reasoning above, Applicant respectfully requests that the rejections of independent claims 1, 88 and 91 under 35 U.S.C. §§ 102 and 103 citing Peiffer be withdrawn upon reconsideration.

Finally, the rejections of claims 52, 75 and 76 are rendered moot by their cancellation without prejudice herein. Claims 2, 3, 5 to 23, 26, 27, 28, 33 to 42, 44, 47, 49, 52 to 62, 64 to 73, and 78 to 87 depend, directly or indirectly, from independent claim 1. Likewise, claims 89 and 90 depend from 88, and claim 93 depends from claim 91. It follows by statute that the dependent claims are also not anticipated by and not obvious over Peiffer for at least the reasons set forth above with respect to independent claims 1, 88 and 91. Consequently, Applicants respectfully request that the rejections of claims 2, 3, 5 to 23, 26, 27, 28, 33 to 42, 44, 47, 49, 52 to 62, 64 to 73, and 78 to 87, 89, 90 and 93 under 35 U.S.C. §§ 102 and 103 also be withdrawn upon reconsideration.

### **Conclusion**

A Petition for an Extension of Time of two months and the required fee for the Petition are submitted herewith. Should any further fee be required in connection with the present response, the Examiner is authorized to charge such fee, or to render any credit, to Deposit Account No. 04-1928 (E.I. du Pont de Nemours and Company).

In view of the above amendments and remarks, it is believed that pending claims 1, 2, 3, 5 to 51, 53 to 73, 77 to 91 and 93 are in condition for allowance, and such action is earnestly solicited. In closing, the Examiner is invited to contact the undersigned attorney by telephone at (302) 892-1004 to conduct any business that may advance the prosecution of the present application.

Respectfully submitted,



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